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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/580,524

05/24/2006

Michael James Unwin

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

09/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/580,524 | UNWIN ET AL. | |
| | Examiner | Art Unit | |
| | Anthony Weier | 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-39 is/are pending in the application.
- 4a) Of the above claim(s) 28-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/30/06 and 5/24/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II (claims 22-27) in the reply filed on 6/12/08 is acknowledged. The traversal is on the grounds that no serious burden exists in examining all of the claims in the application. This is not found persuasive because the different inventions require differing search strategies as well as the search of areas not completely commensurate with one another.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112, 1st

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 22-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, it is not seen where the permeability rate is dependent on "each 1 millimeter of the walls thickness" (e.g. claim 1). Such wording suggests that by increasing the wall thickness of the wine container the permeability is *increased also* which does not reasonably appear to be the case. It would appear that such transmission rate would actually decrease, if anything. Instead, it appears that Applicant may have intended to provide such range of permeability rates based on the use of a single material having 1 millimetre of wall

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thickness. There appears to be no suggestion in the specification as to how to use such relationship (e.g. as recited in claim 1) in comparison with container walls with different thicknesses.

Claim Rejections - 35 USC § 112, 2nd

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24, line 1 is indefinite; it appears that "liquid" was misspelled.

Claim 25, line 3 is indefinite in that it is not clear whether "1mm" refers to one millimeter or something else.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22, 23 rejected under 35 U.S.C. 103(a) as being unpatentable over AU 715891/74 taken together with Hickinbotham.

AU discloses a method of controlling the rate of oxygen transfer in a container of wine by providing a closed container (Figure 1) made of a material which is permeable for the introduction of oxygen into the packaged wine at a particular rate (e.g. page 8).

The claims differ in referring to the specific rate of transmission of oxygen to within said container. It should be noted, however, that such determination would have been well within the purview of one skilled in the art. The suggestion in determining such rate is dependent on several variables including the thickness and particular type of container material as well as speed of maturation of the wine desired as taught, for example, in Hickinbotham (e.g. Paragraphs 91 and 92). It would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such rate of permeability through routine experimental optimization.

7. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over AU 715891/74 taken together with Hickinbotham and Diaz.

AU 715891/74 further discloses, as recited in claim 25, a ratio of volume of wine to surface area of container for each 1 mm of thickness as being about 30 liters/meter square/1 mm of thickness¹.

The claims further differ in calling for a floating barrier member in sliding contact with the container walls that separates the wine from the headspace. Diaz teaches holding wine in a tank wherein a floating disc which is slidably movable along the wall of the tank and provides a barrier between said wine and headspace within the tank (see paragraph 50). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated same in the container of AU 715891/74 for the reasons set forth in Diaz such as, for example, to limit the exposure of wine to oxygen (paragraph 9).

The claims also call for storage of the wine in the container for about 4-36 months with a particular rate of oxygen transmission per liter of wine per year. It should be further noted that

¹ Example 2 sets forth a ratio of 1 cm squared container area to 3 cubic cm of wine at a container thickness of 0.089

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AU 715891/74 does teach processing and holding of the wine for about 3 months and that said reference does not restrict the length of time for fermentation, settling, etc. Nevertheless, such determination of how long to ferment and hold a wine product would have been well within the purview of one skilled in the art, and it would have been further obvious to have arrived at such time as a matter of preference depending on, for example, the degree of fermentation desired in the product. As for the particular rate of oxygen transmission of a year, as discussed above, such determination would have been well within the purview of one skilled in the art. The suggestion in determining such rate is dependent on several variables including the thickness and particular type of container material as well as speed of maturation of the wine desired as taught, for example, in Hickinbotham (e.g. Paragraphs 91 and 92). It would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such rate of permeability per year through routine experimental optimization.

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over AU 715891/74 taken together with Hickinbotham, Diaz and French 2736923.

Claim 27 further calls for the presence of oak staves suspended within the wine container during storage. However, French 2736923 teaches the use of such staves suspended in stored wine for flavoring same. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such flavor modifying element as a matter of preference depending on the particular flavor desired in the final wine product.

Prior Art

mm. Standardizing said ratio based on 1 mm gives a ratio of 11.2 cm squared to 33.7 cubic cm which, inversely, converts to 30 liters per meter squared.

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner
Art Unit 1794

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August 29, 2008

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